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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,249	06/28/2002	Kenichi Tabata	50069-110	1960
20277 7590 01/21/2010 MCDERMOTT WILL & EMERY LLP 600 13TH STREET, N.W. WASHINGTON, DC 20005-3096				
EXAMINER				
REICHL, KARIN M				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/030,249

**Applicant(s)**

TABATA ET AL.

**Examiner**

Karin M. Reichle

**Art Unit**

3761

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 26, 28, 37, 38, 48, 49, 51 and 53-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26, 28, 37, 38, 48, 49, 51 and 53-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5-18-04, 10-26-04 and 12-15-09 is/are: a) ☒ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12-15-09 has been entered.

### ***Response to Amendment***

2. Applicant's response is considered to be the amendments to the 5-11-09 substitute specification, claims, remarks, and the replacement and annotated sheets of Figures filed 12-15-09. It is noted with regard to the Applicant's remarks on page 12, last line that the replacement sheets filed 2-28-08 were never approved.

### ***Specification***

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For Example:

***Drawings***

4. The drawings were received on 12-15-09. These drawings are approved. However see the discussion in paragraph 5.

5. The drawings are objected to because the Figures are still replete with informalities. *supra*. For example, in Figure 1, what is the structure at the end of the line from numeral 3? Applicant's remarks have been noted but for clarity either the entirety of the core should be so denoted or none of the core should be so denoted. Also outlines of structure underlying other structure and lines from numerals denoting such structures should be dashed, e.g., the lines from 20 and 21 in Figure 12 should be dashed to denote underlying structure, see paragraphs 152-153. Structure which is the same in various should be shown consistently, e.g., in Figure 12, numerals B22 do not denote the correct portions of the flap, see, e.g., paragraph 145 as amended. It should be noted that these examples are merely illustrative. The Figures should be carefully reviewed and revised, as necessary, to overcome all the informalities therein. Applicants are thanked in advance for their cooperation in placing the drawings in proper form. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Description***

6. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112,

first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: paragraphs 2-4 as filed 12-15-09.

7. The disclosure is still objected to because of the following informalities: The description of 5-11-09 is still replete with informalities. For example: 1) The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims should be commensurate in scope, see MPEP 608.01 (see and note the discussion infra in paragraphs 8-9 also). 2) The textual and pictorial description should be consistent throughout the application at the very least, see, e.g., discussion in paragraph 9 with regard to “free edge”, “free portion”. For another example, with regard to, e.g., claim 54 and paragraph 158 and Figures 12-15 and 17, the Figures show member 60 not superposed on the narrowest portion of the hour glass-shaped core but superposed on lateral portions extending laterally outward therefrom which portions define a widest width of the hour-glass shape. However this is not what is described textually nor claimed, i.e. the members 60 as shown do overlap portions of the constricted side edge portions of the core defining a narrow width portion which encircle the legs where such narrow portion intersects/joins the side width portion, e.g. the portion which would be located at the top of the legs. The specification should be carefully reviewed and revised, as necessary, to overcome the informalities therein. Applicants are thanked in advance for their cooperation in placing the description in proper form.

Appropriate correction is required.

***Claim Objections***

8. Claims 26, 28, 37-38, 48-49, 51, and 53-55 are objected to because of the following informalities: In claim 26, lines 12 and 32 appear to be missing a word or words. It is noted that in claim 28, line 3, “is fixed to said pervious sheet” and line 4, “is fixed to corresponding said standing portion” appear to be redundant (Note “fixed” includes direct or indirect fixation). In claim 48, line 2, “said” or “the”, first, should be deleted. In claim 49, line 7, after “respectively”, --,-- should be inserted. Also again lines 6 et seq, i.e. “fixed to...”, appear to be redundant. In claim 51, lines 3 and 5 appear to be missing a word or words. In claim 54, should “by constricting...constricted side portions” be --including side portions of the absorbent core which--(Note also discussion in paragraph 7 supra)? The claims should be carefully reviewed and revised, as necessary. Applicants are thanked in advance for their cooperation in placing the claims in proper form. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

9. Claims 26, 28, 37-38, 48-49, 51, and 53-55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 26, a positive structural antecedent basis for “the standing sheet”, line 12, should be set forth (Note on line 6, “standing cuffs” are claimed). Also the description of a “free edge” of the surface contacting portion which portion is a portion of a sheet which is fixed at a base line (note also claim 28), i.e. not free, at least indirectly fixed, on lines 22-24 is inconsistent (Note that such edge is the edge of such portion distal from the folding back

portion). In regard to claim 28, positive structural antecedent bases for “said standing...article”, line 2, and “said surface-contacting...article” should be set forth. Lines 2-3 of claim 38 and lines 3-4 of claim 38 appear to be inconsistent, i.e. are cuffs outwardly extending from, i.e. provided to, the laterally extending portions or not? In claim 48, a positive structural antecedent basis for “said...sheet”, line 2, should be set forth. Note also use of term “free portion” and the discussion of the “free edge” in claim 26 which also applies here. In claim 51, a positive antecedent basis for “members...standing portion”, lines 4-5, (note only at least one such member is required in claim 26) should be set forth.

### ***Claim Language Interpretation***

10. None of the claim terminology has been specifically defined in the specification. Therefore, terminology is interpreted according to its usual meaning, e.g. dictionary, definition. With regard to the claim 26, line 31, “substantially vertical” is interpreted as allowing some leeway from vertical, see, e.g., Figure 17 and paragraphs 149-150 of the instant specification. The terminology “in the vicinity”, i.e. absent claiming of specific distances, is considered relative, i.e. lines 22-28 of claim 26 will be interpreted as requiring at a minimum at least two stretching members in spaced arrangement on the contacting portion between the folding back portion and the distal edge, see discussion *infra*, at least one further stretching members on the standing portion between the base line and the folding portion and at least one still further stretching member arranged on the standing sheet, i.e. includes the contacting portion, standing portion or folding back portion, “in the vicinity” of the folding back portion. Due to the lack of clarity discussed in paragraphs 7-9 *supra*, the “free edge” and “free portion” are interpreted as the

distal edge and distal portion, resp., claim 54 is interpreted to require stretching members not superposed on the narrowest portion of the hour glass-shaped core but superposed on lateral portions extending laterally outward therefrom which portions define a widest width of the hour-glass shape, “fixed” is interpreted as set forth in paragraph 8 supra and claim 38 is interpreted to require either cuffs extending laterally, see claim 37, or no cuffs. See also the discussion of the scope of claim language in the prior art rejections infra.

***Claim Rejections - 35 USC § 102***

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 26, 28, 37-38, 48 and 53-55 are rejected under 35 U.S.C. 102(b) as being anticipated by Roe et al, ‘121.

See the Claim Language Interpretation section supra, hereinafter also referred to as CLI, and ‘121 at the Figures, especially Figure 1, elements 84, 77, 76, 102, 62, 64 and 66, Figure 3, the number of dashed lines representing elastic members in the Figures and the number of elastic members shown in cross sections of such Figures, col. 4, lines 6-7 and 10-12, col. 9, lines 13-34, col. 10, lines 6-22, and col. 13, line 57-col. 14, line 4.

Claim 26: The disposable absorbent article is 20 having an absorbent structure comprising an absorbent core 44 between liquid pervious sheet 38 and liquid impervious sheet 42, the liquid pervious sheet having a width greater than that of the absorbent structure so that the liquid pervious sheet has laterally extended portions extending beyond respective opposite sides of said absorbent structure, e.g. at least a portion of liquid pervious sheet 38 and liquid



impervious sheet 42 below 62 in Figure 3 forms such laterally extending portions, standing cuffs for surrounding wearer's legs provided at respective opposite sides of the disposable absorbent article, e.g. the portion of 102 between 66 and 80/84 or between 66 and 64 as shown in Figure 1, each of the standing cuffs comprising a standing sheet and stretching members provided to the standing sheet, see, e.g., Figures 1-3, one standing sheet, as best understood, see discussion supra, having a proximal edge "fixed", see CLI supra, to one of the laterally extended portions of the liquid pervious sheet, the proximal edge defining a base line extending in a direction parallel to a longitudinal centerline of the disposable absorbent article, e.g., adjacent 80/84 or 64 (It should be noted that the base line is not required to be discrete from the side flap), the standing sheet extending from the base line in a lateral direction with respect to the base line toward the longitudinal centerline of the disposable absorbent article, see, e.g., the Figures, the standing sheet comprising a standing portion, a folding back portion, and a surface contacting portion, the standing portion extending, on the corresponding one of the laterally extended portions, from the base line to the folding back portion and being folded back at the folding back portion, and the surface contacting portion extending, on the standing portion, from the folding back portion toward the base line, see, e.g., a standing portion from, e.g., adjacent 80/84 or 64 and a first lower C-fold to adjacent the second upper C-fold in Figure 3, a surface contacting portion from the second C-fold to the distal edge 66, and a folding back portion, i.e. the second C-fold, and two or more of the stretching members are provided to the standing sheet and arranged in the "vicinity" of a free edge of the surface-contacting portion and spaced apart from each other, at least one stretching member is provided to the standing sheet in the standing portion and in the "vicinity" of the base line, and at least one stretching member is provided to the standing sheet in

the “vicinity” of the folding back portion, see the Claim Language Interpretation section *supra* and the portions of ‘121 cited *supra*, i.e. the double dashed lines 76 adjacent edge 66 and the double dashed lines 77 and the location of the latter with regard cuff 102 and similar locations of 102 in Figure 3 which show an alternative folding pattern for the article of Figure 1 (Also, note col. 9, lines 21-22 and col. 10, lines 12-13 as well as comparable double dashed lines in other Figures and the number of members designated by such, i.e. each dashed line represents an elastic member, or, in other words 76 and 77 in Figure 1 each represent two elastic members and the description of members 77 associated with the distal edge, i.e. “at least one”, e.g. three) and therefore ‘121 teaches a minimum of at least two stretching members in spaced arrangement on the contacting portion between the folding back portion and the distal edge, at least one further stretching member on the standing portion between the base line and the folding portion and at least one still further stretching member arranged on the standing sheet, e.g. the contacting portion, i.e. adjacent the distal edge 66 the article can include, e.g., three spaced stretching members, “in the vicinity” of the folding portion, i.e. the one of such three members closest to the folding portion.

With regard to the last section, i.e. during use of said disposable absorbent article (note that such sets forth a function, capability or property of the claimed structure), the standing cuffs are deformed by contractile force of said stretching members such that the standing portion extends in a “substantially vertical direction” relative to the corresponding one of the laterally extended portions and the surface-contacting portion extends toward corresponding one of the wearer’s legs, see CLI *supra* and, e.g., col. 9, lines 37-39 and col. 10, lines 6-9 (Note that “stand up” as defined by the dictionary is “erect; upright” and “upright” is defined as “In a vertical

position, direction or stance”) and the last paragraph of col. 10. Therefore it is the Examiner’s first position that ‘121 at most explicitly discloses standing portions as claimed as best understood. Alternatively, i.e. the Examiner’s second position, ‘121 at least teaches all the claimed structure and that the cuffs stand up as discussed supra. Therefore there is sufficient factual evidence for one to conclude that such same structure inherently includes the same capability, function or property as claimed of such structure, i.e. the capability, function or property as claimed as best understood.

Claim 28: See, e.g., col. 13, line 57-col. 14, line 4 and Figures 1 and 3. It is noted that claim 28 does not require direct fixation, see CLI supra.

Claims 37-38: See discussion of claim 26, CLI supra and, e.g., col. 9, lines 29-34 and col. 10, lines 15-17 and elements 80/84 in Figure 1, i.e. a gasketing, i.e. plane gathering, cuff may, i.e. also infers “may not”, be provided outboard of the standing cuff as best understood.

Claim 48: See discussion of claims supra and Figures, e.g. if the embodiment of Figure 1 were double folded such as described in Figure 3, at least the middle portion of the second fold, i.e. the folding back portion, extends outward of the side edge of the absorbent core in the crotch region thereof, i.e. outside an area over the absorbent core. It is noted that claim 48 does not require the entire folding portion be located outside of the entire area over the absorbent core.

Claim 53: See discussion of the stretching members in claims 26 and 28, esp. the discussion of members 77, e.g. can be four members or more, and the discussion of the last section of claim 26, that the diaper, i.e. the side flap, is at least longitudinally curved or deformed during use due to the contraction of the elastic members and the ends of the cuffs being attached to the remainder of the diaper and note that the claim does not require the disposal of the

stretching members between particular portions of the sheet and absorbent structure, e.g. does not require the back side of the absorbent structure and the top side of the impervious sheet, i.e. stretching members, e.g., at least some of 77, are disposed between the liquid impervious sheet, e.g. along the sides of the core or over the core, and the absorbent structure, e.g. the sides or top, to lift the respective opposite sides of the absorbent structure, and the stretching members extending along a direction parallel to the longitudinal centerline of the disposable absorbent article.

Claim 54: See CLI supra, the discussion of claim 53 and the Figures, e.g. Figure 1, '121 teaches the claimed structure as best understood, i.e. the absorbent core having a hourglass-like shape with a widest width portion and a narrowest width portion defined by both side portions of the absorbent core so that the side portions respectively encircle the wearer's legs, and the stretching members disposed between the liquid impervious sheet and the absorbent structure are arranged not to superpose the narrowest portion of the hour glass-shaped core but superpose lateral portions extending laterally outward therefrom which portions define the widest width of the hour-glass shape.

Claim 55: See discussion of claim 53, i.e. members are disposed between the liquid impervious sheet and the absorbent core to lift the respective opposite sides of said absorbent structure, the stretching members extending along a direction parallel to the longitudinal centerline of the disposable absorbent article.

***Claim Rejections - 35 USC § 103***

13. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

14. Claims 49 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe et al '121.

Claim 49: This claim requires a back sheet disposed on a back-side of the liquid impervious sheet, the liquid impervious sheet having a width greater than that of the absorbent structure so that the liquid impervious sheet has laterally extended portions extending beyond the respective opposite sides of the absorbent structure, the laterally extended portions of the liquid impervious sheet being "fixed" to those of the liquid pervious sheet, respectively and the proximal edge of the standing sheet being "fixed" to corresponding one of the laterally extended portions of the liquid impervious sheet and the corresponding one of the laterally extended portions of the liquid pervious sheet. See CLI supra and the discussion of claim 26 as well as col. 6, lines 48-52 of '121, i.e. a film-coated nonwoven includes a back sheet, i.e. the nonwoven, and a liquid impervious sheet, i.e. the film, and lines 59-60. Therefore as best understood '121 clearly teaches all the claimed structure except for the back sheet being on the back side, i.e. outer surface, of the sheet. However, to employ the backsheet on the back/outer side of the sheet/film of '121, if not already, would be obvious to one of ordinary skill in view of the recognition that such provides a more cloth-like appearance and the desire by '121 of such appearance.

Claim 51: This claim requires the stretching members arranged in the vicinity of said distal edge, as best understood, of the surface-contacting portion have 400 d to 640 d and a

contraction percentage of 160% to 300%, and the stretching members, as best understood, arranged in the standing portion have 640 d to 2100 d and a contraction percentage of 150% to 250% ( It is noted that such can have the same d and percentage). While '121 does not teach such d and percentage, such does teach members 77 which have some d, are elastic, are attached in a elastically contractible condition in order to contract or gather the edge 66 and have a length dictated by the diaper design, see, e.g., col. 10, lines 12-28 and MPEP 2144.05, i.e. contraction/gathering is a result effective variable. Therefore, the prior art teaches the general conditions claimed (It is noted that the instant application does not disclose the criticality of the specific d and percentage at page 20). Therefore, since the general conditions of the claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation, i.e. the d and percentage a claimed. See *In re Aller*, 105 USPQ 233.

### ***Response to Arguments***

15. Applicant's remarks have been considered but are either deemed moot in that such matter has not been repeated or is deemed not persuasive for the reasons set forth supra.

### ***Conclusion***

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karin M. Reichle/  
Primary Examiner, Art Unit 3761

January 18, 2010